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## **Editorial**

At a juncture in time when two decades have passed since the establishment of a constitutional democracy in South Africa and almost twenty years since the commencement of the South African Schools Act, this special issue reflects on the interrelationship between Education and the Law. This compilation of ten articles includes a historic look at Education Law as a field of study and reflects on a range of topical issues such as safeguarding learners against exposure to pornography, promoting safety in youth sport, the essentiality of ensuring open deliberative democratic practices during school elections, the role of educator "prosecutors" in disciplinary hearings of learners, pluralism as overriding consideration by the courts, as well as the rights to freedom of expression and life in relation to education. In many respects the multicultural plurality in most educational institutions depicts the coalface of the South African society. Legal disputes and conflicting interests in schools about equal access to quality education, promotion of African languages and non-diminishment of Afrikaans in the face of English hegemony and the accommodation of religious diversity echo the realities of life in South Africa.

[Johan Beckmann's](#) personal account provides a historic look at the beginnings of Education Law as a field of study in South Africa expresses the hope that more South African universities will become involved in studying the field of Education Law and that a joint partnership between educationists and jurists might develop in future.

[Stuart Woolman's](#) insightful article contends that the constitutional aim to promote pluralism as the *grundnorm* in South Africa explains some seemingly anomalous judgments in the education context. This plausible explanation leaves much food for thought, but also raises an array of questions. Should the paradigmatic notion of pluralism trump all other legal principles in a constitutional democracy? Are the principles of legality, justice and fairness not as important? Should pluralism underlie the adjudication process of balancing of rights and freedoms according to contextual circumstances in spite of unreasonable or unlawful state action? Have the courts not merely shown deference to an external political schema as arbiter of what "the good life" should be?

The criminalisation of exposing children or learners to pornography is particularly relevant in schools in this era of ready access to the internet and social media and is aptly explained by [Susan Coetzee](#). [Marius Smit](#) appositely combines legal analysis of provincial regulations with qualitative research, in keeping with the methodology of social sciences, to provide evidence of undemocratic conditions and features as well as shortcomings in the system of school governing body elections. [Greenfield et alia](#) contend that a detailed and textured approach to coach education, coupled with a more nuanced judicial appreciation of the importance of sport to society (and schools)

and a positive interpretation of the 'prevailing circumstances', may help prevent widespread expansion of liability in both rugby and sport more generally. [Michael Laubscher and Willie van Vollenhoven](#) suggest that South Africa should take cognisance of the legislative and judicial measures that have been taken in the United States and Canada to deal with the dilemmas posed by cyber bullying in schools. [Erica Serfontein](#) explores the nexus between the right to life and education in laying a foundation for the development of learners' talents and capabilities, advancing democracy, combating unfair discrimination and eradicating of poverty in view of the essential role that the law plays to uphold these rights to attain quality of life. Based on qualitative data, [Willie van Vollenhoven](#) contends that student-educators are not able to internalise or apply the right to freedom of expression in practice. He warns that our school system is failing to develop learners as critical thinkers in the marketplace of ideas. [Elda de Waal and Erika Serfontein](#) argue that the neither the State, nor parents or educators are able to independently guide learners to responsible adulthood – a collaborative effort in accordance with the democratic principles of cooperation is required. They caution against the reciprocal tendency of parents and schools to blame each other and encourage parents to participate accountably to address learner misconduct. At times educators are required to fulfil quasi-judicial roles as evidence leaders (prosecutors) when conducting disciplinary hearings of learners. [Anthony Smith](#) highlights the difficulties experiences by these "evidence leaders" and recommends the provision of specific training in this regard.

It is notable that three contributions to this special issue on Education Law utilised education research methodology, which is grounded in social science paradigms, in conjunction with legal analysis, based on law research methodology. This accentuates the interdisciplinary relationship between education and the law and promotes the epistemological enrichment of legal theory. Although the jurisprudence of the field of Education Law is fairly modest, the implications of court decisions on educational issues have a profound effect on the South African society, firstly because schools are microcosms of society, secondly because democratic (or undemocratic) practices in educational institutions leave indelible imprints on the youth that will eventually find expression in the life of a nation, and finally because the success (or failure) of an education system will ultimately determine the level of progress and economic destiny of the nation.

### **Special Edition Editor**

Prof Marius Smit

